



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

ELP  
Docket No. 3599-99  
31 March 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 29 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Navy on 19 April 1962 for six years as a YN2 (E-5). At the time of your reenlistment, you had completed more than five years of active service.

The record reflects that on 15 May 1962 you requested permission to visit Spain while on leave. The Chief of Naval Personnel granted your request on 1 June 1962. However, on 8 November 1962, you were reported in an unauthorized absence (UA) status and remained absent until you were apprehended by civil authorities on 28 March 1963. You remained in civil custody and were convicted on 15 May 1963 of cashing three \$50 checks with insufficient funds. You were committed to the custody of the attorney general for an indeterminate period of treatment and supervision until discharged by the Federal Corrections Division of the Board of Parole. The maximum sentence for same offense under Article 132, Uniform Code of Military Justice, was confinement for five years.

On 25 July 1963, you were notified that discharge under other than honorable conditions was being initiated by reason of misconduct due to civil conviction. You were advised of your procedural rights, declined to submit a statement in your own behalf, and waived your right to be represented by counsel and have your case heard by a board of officers. Thereafter, the commanding officer recommended an undesirable discharge by reason of misconduct due to civil conviction. On 13 August 1963, an enlisted performance evaluation board convened in the Bureau of Naval Personnel and recommended separation with an undesirable discharge by reason of misconduct. The Chief of Naval Personnel approved the recommendation and you were so discharged on 23 August 1963.

On 8 January 1964, the United States Marshal returned blank military forms to the Navy that were in your possession when you were apprehended by the civil authorities. These included 54 Enlisted Leave Authorizations, four Honorable Discharge Certificates, five Reports of Transfer or Discharge (DD Form 214), one Fleet Reserve Certificate, one Armed Forces Liberty Pass, one Certificate of Service, and 34 Armed Forces Identification Cards.

Regulations then in effect authorized the discharge of an individual convicted by civil authorities of an offense for which the maximum penalty under the UCMJ was confinement in excess of one year, or which involved moral turpitude.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your prior honorable service and the fact that it has been more than 33 years since you were discharged. The Board noted your statement explaining the circumstances which led to your prolonged period of UA and civil conviction, the El Paso Police Department letter to the effect that you had no criminal record, and the letter which states that you passed a routine scan by the Federal Bureau of Investigation (FBI) for a criminal record when you applied for employment with the Bureau of Census. You contend that you do not recall being contacted by anyone from your last command with regard to your discharge. You also assert that you have been a good citizen since discharge.

The Board concluded that the foregoing factors, contentions and assertion were insufficient to warrant recharacterization of your discharge given your civil conviction for offenses involving moral turpitude and the prolonged period of unauthorized absence which was terminated only with your apprehension by civil authorities. The number of blank military forms you had in your possession when apprehended demonstrated to the Board that you had no immediate intention of returning to military jurisdiction.

Your contention that you were not contacted by military authorities at the time of discharge is not supported by the evidence of record. An FBI report obtained by the Board noted that your post-service conduct has been marred by convictions for grand theft, a parole violation, larceny, driving under the influence, and first degree theft. The Board concluded that your discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director